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7 Attorney for Plaintiff Environmental  
8 Research Center, Inc.

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ALAMEDA**

12 ENVIRONMENTAL RESEARCH CENTER,  
13 INC., a non-profit California corporation,

14 Plaintiff,

15 v.

16 CO.EXIST NUTRITION CORP., individually  
17 and doing business as 22 DAYS NUTRITION  
18 and DOES 1-25, Inclusive,

19 Defendants.

Case No. RG16840036

**NOTICE OF ENTRY OF JUDGMENT**

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that the Court has entered Judgment in the above-entitled  
22 matter. A true and correct copy of the Judgment is attached hereto as Exhibit A.

23 Dated: January 31, 2018

WRAITH LAW



24 By: \_\_\_\_\_

25 William F. Wraith  
26 Attorney for Plaintiff Environmental  
Research Center, Inc.

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**EXHIBIT A**

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3 Tel: (949) 452-1234  
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4 Attorney for Plaintiff  
5 ENVIRONMENTAL RESEARCH CENTER, INC.  
ANTHONY J. CORTEZ SBN 251743  
6 GREGORY SPERLA SBN 278062  
GREENBERG TRAUIG LLP  
7 1201 K Street, Suite 1100  
Sacramento, CA 95814-3938  
8 Telephone: (916) 442-1111  
Facsimile: (916) 448-1709

9 Attorneys for Defendant  
10 CO.EXIST NUTRITION CORP., individually and  
doing business as 22 DAYS NUTRITION  
11

**FILED**  
**ALAMEDA COUNTY**  
**JAN 23 2018**  
**CLERK OF THE SUPERIOR COURT**  
By *[Signature]* Deputy

**AUG 29 2017**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

15 ENVIRONMENTAL RESEARCH CENTER,  
16 INC. a non-profit California corporation,

17 Plaintiff,

18 v.

19 CO.EXIST NUTRITION CORP., individually  
20 and doing business as 22 DAYS NUTRITION  
and DOES 1-25, Inclusive,

21 Defendants.  
22  
23

CASE NO. RG16840036

**STIPULATED CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 23, 2016

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On November 23, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-  
26 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a  
27 Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of California Health and  
28

1 Safety Code section 25249.5 *et seq.* (“Proposition 65”), against CO.EXIST NUTRITION CORP.,  
2 individually and doing business as 22 DAYS NUTRITION (“CO.EXIST”) and DOES 1-25.  
3 Subsequently an Amended Complaint was filed (the operative Complaint referred to hereinafter as the  
4 “Complaint”). In the Complaint, ERC alleges that the following products manufactured, distributed, or  
5 sold by CO.EXIST contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens  
6 and reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65  
7 warning:

- 8 • Co. Exist Nutrition Corp. 22 Days Goji Maté Firecracker - Lead
- 9 • Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Walnut Fudge  
10 Brownie – Lead, Cadmium
- 11 • Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Coconut  
12 Chocolate Chip – Lead, Cadmium
- 13 • Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar PB &  
14 Chocolate Chip Nirvana – Lead, Cadmium
- 15 • Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Quinoa  
16 Chocolate Chip Crisp – Lead, Cadmium
- 17 • Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Almond Butter  
18 Chocolate Chip – Lead, Cadmium
- 19 • Co. Exist Nutrition Corp. 22 Days Nutrition 10g Organic Protein Bar Nut Butter  
20 Buddha - Lead
- 21 • Co. Exist Nutrition Corp. 22 Days Nutrition 10g Organic Protein Bar Daily Mocha  
22 Mantra - Lead
- 23 • Co. Exist Nutrition Corp. 22 Days Nutrition 11g Organic Protein Bar Enlightened  
24 Pumpkinseed – Lead
- 25 • Co. Exist Nutrition Corp. 22 Days Nutrition Salted Caramel Protein Bar
- 26 • Co. Exist Nutrition Corp. 22 Days Nutrition Chunky Peanut Butter Protein Bar
- 27 • Co. Exist Nutrition Corp. 22 Days Nutrition Fudge Brownie Protein Bar

- 1 • Co. Exist Nutrition Corp. 22 Days Nutrition Peanut Butter Chocolate Chip Protein
- 2 Bar
- 3 • Co. Exist Nutrition Corp. 22 Days Nutrition Strawberry Protein Powder
- 4 • Co. Exist Nutrition Corp. 22 Days Nutrition Chocolate Protein Powder
- 5 • Co. Exist Nutrition Corp. 22 Days Nutrition Vanilla Protein Powder

6 **1.2** ERC and CO.EXIST are hereinafter referred to individually as a “Party” or  
7 collectively as the “Parties.”

8 **1.3** ERC is a 501(c)(3) California non-profit corporation dedicated to, among other  
9 causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
10 and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging  
11 corporate responsibility.

12 **1.4** For purposes of this Consent Judgment, the Parties agree that CO.EXIST is a business  
13 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a “person  
14 in the course of business” within the meaning of Proposition 65. CO.EXIST manufactures, distributes,  
15 and/or sells the Covered Products.

16 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
17 dated April 29, 2016 and July 19, 2017 that were served on the California Attorney General, other  
18 public enforcers, and CO.EXIST (“Notices”). True and correct copies of the 60-Day Notices dated  
19 April 29, 2016 and July 19, 2017 are attached hereto as **Exhibits A** and **B** respectively and each is  
20 incorporated herein by reference. By the time the Motion to Approve is heard, more than 60 days will  
21 have passed since the Notices were served.

22 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes  
23 persons in California to lead and/or cadmium without first providing clear and reasonable warnings in  
24 violation of California Health and Safety Code section 25249.6. CO.EXIST denies all material  
25 allegations contained in the Notices and Complaint.

26 The Parties have entered into this Consent Judgment in order to settle, compromise, and  
27 resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent

1 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their  
2 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
3 divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers. Except  
4 for the representations made above, nothing in this Consent Judgment shall be construed as an  
5 admission by the Parties of any fact, issue of law, or violation of law, nor shall compliance with this  
6 Consent Judgment be construed as an admission by the Parties of any fact, issue of law, or violation  
7 of law, at any time, for any purpose.

8           **1.7**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
10 current or future legal proceeding unrelated to these proceedings.

11           **1.8**     The “Effective Date” of this Consent Judgment is the date on which Notice of  
12 Entry of Judgment is served on Defendant by Plaintiff. Electronic service of the Notice of Entry of  
13 Judgment via email to Counsel shall be deemed sufficient service.

14 **2.     JURISDICTION AND VENUE**

15           For purposes of this Consent Judgment and any further court action that may become necessary  
16 to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over  
17 the allegations of violations contained in the Complaint, personal jurisdiction over CO.EXIST as to the  
18 acts alleged in the Complaint that venue is proper in Alameda County, and that this Court has jurisdiction  
19 to enter this Consent Judgment as a full and final resolution of all claims up through and including the  
20 Effective Date which were or could have been asserted in this action based on the facts alleged in the  
21 Notices and Complaint.

22 **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

23           **3.1**     Beginning twelve months from the Effective Date (“Compliance Date”), CO.EXIST  
24 shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing  
25 into the State of California”, or directly selling in the State of California, any Covered Products which  
26 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day  
27 and/or “Daily Cadmium Exposure Level” of more than 4.10 micrograms of cadmium per day unless it  
28

1 meets the warning requirements under Section 3.2.

2           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State of  
3 California” shall mean to directly ship a Covered Product into California for sale in California or to  
4 sell a Covered Product to a distributor that CO.EXIST knows or has reason to know will sell the  
5 Covered Product in California.

6           **3.1.2** For purposes of this Consent Judgment “Daily Cadmium Exposure Level” shall  
7 be measured in micrograms, and shall be calculated using the following formula: micrograms of  
8 cadmium per gram of product, multiplied by grams of product per serving of the product (using the  
9 largest serving size appearing on the product label), multiplied by servings of the product per day  
10 (using the largest number of servings in a recommended dosage appearing on the product label),  
11 which equals micrograms of cadmium exposure per day.

12           For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall be measured in  
13 micrograms, and shall be calculated using the following formula: micrograms of lead per gram of  
14 product, multiplied by grams of product per serving of the product (using the largest serving size  
15 appearing on the product label), multiplied by servings of the product per day (using the largest  
16 number of servings in a recommended dosage appearing on the product label), which equals  
17 micrograms of lead exposure per day, excluding amounts of allowances of lead in the ingredients  
18 listed in the table below:

<b>INGREDIENT</b>	<b>ALLOWANCES OF AMOUNT OF LEAD</b>
Calcium (Elemental)	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram

Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

If, at any time after the Compliance Date, ERC tests a Covered Product that does not contain a warning described in Section 3.2, and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, CO.EXIST agrees to confidentially supply to ERC, within 30 days of ERC's written request, a list of ingredients, including the percentage of each ingredient ("Ingredient List"), of that particular covered product so that ERC may be able to calculate the daily exposure based on the allowances in the table above.

### 3.2 Clear and Reasonable Warnings

If CO.EXIST is required to provide a warning under Section 3.1, the following warning must be utilized ("Warning"):

**WARNING:** This product contains chemicals known to the State of California to cause [cancer and] birth defects or other reproductive harm.

or

**WARNING:** This product can expose you to chemicals including [lead] [and] [cadmium] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

CO.EXIST shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4. As identified in the brackets, the warning shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of CO.EXIST's product packaging and the word

1 “WARNING” shall be in all capital letters and in bold print. No statements contradicting or conflicting  
2 with the Warning shall accompany the Warning.

3 CO.EXIST must display the above Warning with such conspicuousness, as compared with other  
4 words, statements, design of the label, container, or on its website, as applicable, to render the Warning  
5 likely to be read and understood by an ordinary individual under customary conditions of purchase or use  
6 of the product.

### 7 **3.3 Reformulated Covered Products**

8 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no greater  
9 than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more than 4.10  
10 micrograms of cadmium per day as determined by the quality control methodology described in Section

### 11 **3.4 Testing and Quality Control Methodology**

12 **3.4.1** Beginning within one year of the Effective Date, CO.EXIST shall arrange for  
13 lead and/or cadmium testing of the Covered Products at least once a year for a minimum of three  
14 consecutive years by arranging for testing of three randomly selected samples of each of the Covered  
15 Products, in the form intended for sale to the end-user, which CO.EXIST intends to sell or is  
16 manufacturing for sale in California, directly selling to a consumer in California or “Distributing into  
17 the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is  
18 required for a Covered Product during each of three consecutive years, then the testing requirements  
19 of this Section will no longer be required as to that Covered Product. However, if during or after the  
20 three-year testing period, CO.EXIST changes ingredient suppliers for any of the Covered Products  
21 and/or reformulates any of the Covered Products, CO.EXIST shall test that Covered Product annually  
22 for at least four (4) consecutive years after such change is made.

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or “Daily  
24 Cadmium Exposure Level,” the arithmetic mean of the lead and/or cadmium detection results for the  
25 three (3) randomly selected samples of the Covered Products will be controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
27 laboratory method that complies with the performance and quality control factors appropriate for the  
28



1 \$16,666.67 due within 48 hours of Notice of the Motion to Approve

2 \$11,666.67 due within 30 days of Payment 1

3 \$11,666.67 due within 60 days of Payment 1

4 \$11,666.67 due within 90 days of Payment 1

5 \$11,666.67 due within 120 days of Payment 1

6 \$11,666.65 due within 150 days of Payment 1

7 ERC shall hold any Payments made prior to Notice of Entry of Judgment and not disburse  
8 any of the funds until Notice of Entry of Judgment has been given. If this Consent Judgment is not  
9 approved for any reason, ERC will refund the foregoing payments to CO.EXIST, by wire transfer to  
10 an account for which CO.EXIST will give ERC the necessary account information, within five (5)  
11 days of this Consent Judgment not being approved.

12 4.1 \$7,500.00 of the Total Settlement Amount shall be considered a civil penalty  
13 pursuant to California Health and Safety Code section 25249.7(b)(1) ("Civil Penalty"). ERC will  
14 retain 25% (\$1,875.00) of the Civil Penalty. ERC shall remit the remaining 75% (\$5,625.00) of the  
15 Civil Penalty as set forth in Section 4.4, to the Office of Environmental Health Hazard Assessment  
16 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with  
17 California Health and Safety Code section 25249.12(c).

18 4.2 \$21,875.00 shall be distributed to William F. Wraith as reimbursement of ERC's  
19 attorney's fees, \$3,671.91 shall be distributed to ERC as reimbursement to ERC for reasonable costs  
20 incurred in bringing this action, while \$36,953.09 shall be distributed to ERC for its in-house legal fees  
21 (collectively, "Attorney's Fees). Except as explicitly provided herein, each Party shall bear its own fees  
22 and costs.

23 4.3 In the event that CO.EXIST fails to remit any of the settlement payments owed  
24 under Section 4 of this Consent Judgment on or before the Due Dates, CO.EXIST shall be deemed to  
25 be in material breach of its obligations under this Consent Judgment when ERC provides written  
26 notice of the delinquency to CO.EXIST via electronic mail. If CO.EXIST fails to deliver any  
27 settlement payment within five (5) days from the written notice, the Total Settlement Amount shall be

1 immediately due and owing and shall accrue interest at the statutory judgment interest rate provided in  
2 the Code of Civil Procedure section 685.010. Additionally, CO.EXIST agrees to pay ERC's  
3 reasonable attorney's fees and costs for any efforts to collect the payment due under this Consent  
4 Judgment.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

6 **5.1** This Consent Judgment may be modified (i) by written stipulation of the Parties or  
7 pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent judgment.

8 **5.2** If CO.EXIST seeks to modify this Consent Judgment under Section 5.1, then  
9 CO.EXIST must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
10 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
11 written notice to CO.EXIST within thirty (30) days of receiving the Notice of Intent. If ERC notifies  
12 CO.EXIST in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and  
13 confer in good faith as required in this Section. The Parties shall meet in person or via telephone  
14 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30) days  
15 of such meeting, if ERC disputes the proposed modification, ERC shall provide to CO.EXIST a  
16 written basis for its position. The Parties shall continue to meet and confer for an additional thirty  
17 (30) days in an effort to resolve any remaining disputes. Should it become necessary, the Parties may  
18 agree in writing to different deadlines for the meet-and-confer period.

19 **5.3** In the event that either party initiates or otherwise requests a modification under  
20 Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent  
21 Judgment, the other party shall reimburse the moving party its costs and reasonable attorney's fees for  
22 the time spent in the meet-and-confer process and filing and arguing the motion or application.

23 **5.4** Where the meet-and-confer process does not lead to a joint motion or application in  
24 support of a modification of the Consent Judgment, then either Party may seek judicial relief on its  
25 own.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**

2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
4 this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall inform  
7 CO.EXIST in a reasonably prompt manner of its test results, including information sufficient to permit  
8 CO.EXIST to identify the Covered Products at issue. CO.EXIST shall, within thirty (30) days  
9 following such notice, provide ERC with testing information, from an independent third-party  
10 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating CO.EXIST's  
11 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the  
12 matter prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
16 franchisees, licensees, customers (excluding private labelers), distributors, wholesalers, retailers,  
17 predecessors, successors, and assigns. This Consent Judgment shall have no  
18 application to Covered Products which are distributed or sold exclusively outside the State of California  
19 and which are not used by California consumers.

20 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
22 behalf of itself and in the public interest, and CO.EXIST and its respective officers, directors,  
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees,  
24 licensees, customers (not including private label customers of CO.EXIST), distributors, wholesalers,  
25 retailers, and all other upstream and downstream entities in the distribution chain of any Covered  
26 Product, and the predecessors, successors, and assigns of any of them (collectively, "Released  
27 Parties"). ERC hereby fully releases and discharges the Released Parties from any and all claims,  
28

1 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
2 asserted, or that could have been asserted from the handling, use, or consumption of the Covered  
3 Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from  
4 the failure to provide Proposition 65 warnings on the Covered Products regarding lead and/or  
5 cadmium up to and including the Effective Date.

6 **8.2** ERC on its own behalf only, and CO.EXIST on its own behalf only, further waive  
7 and release any and all claims they may have against each other for all actions or statements made or  
8 undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the  
9 Notices and Complaint up through and including the Effective Date, provided, however, that nothing  
10 in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
11 Judgment.

12 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
13 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
14 discovered. ERC on behalf of itself only, and CO.EXIST on behalf of itself only, acknowledge that  
15 this Consent Judgment is expressly intended to cover and include all such claims up through and  
16 including the Effective Date, including all rights of action therefore. ERC and CO.EXIST  
17 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown claims, and  
18 nevertheless waive California Civil Code section 1542 as to any such unknown claims. California  
19 Civil Code section 1542 reads as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
22 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
23 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
24 THE DEBTOR.

25 ERC on behalf of itself only, and CO.EXIST on behalf of itself only, acknowledge and understand the  
26 significance and consequences of this specific waiver of California Civil Code section 1542.

27 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to constitute  
28 compliance with Proposition 65 by any releasee regarding alleged exposures to lead and/or cadmium  
in the Covered Products as set forth in the Notices and Complaint.

1           **8.5**    Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of CO.EXIST's  
3 products other than the Covered Products.

4 **9.        SEVERABILITY OF UNENFORCEABLE PROVISIONS**

5            In the event that any of the provisions of this Consent Judgment are held by a court to be  
6 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

7 **10.      GOVERNING LAW**

8            The terms and conditions of this Consent Judgment shall be governed by and construed in  
9 accordance with the laws of the State of California.

10 **11.     PROVISION OF NOTICE**

11           All notices required to be given to either Party to this Consent Judgment by the other shall be in  
12 writing and sent to the following agents listed below via first-class mail. Courtesy copies via email may  
13 also be sent.

14 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

15 Chris Heptinstall, Executive Director, Environmental Research Center  
16 3111 Camino Del Rio North, Suite 400  
17 San Diego, CA 92108  
18 Tel: (619) 500-3090  
19 Email: chris\_erc501c3@yahoo.com

20 With a copy to:

21 **WILLIAM F. WRAITH**  
22 **WRAITH LAW**  
23 24422 Avenida de la Carlota, Suite 400  
24 Laguna Hills, CA 92653  
25 Tel: (949) 452-1234  
26 Fax: (949) 452-1102  
27  
28

1 **CO.EXIST NUTRITION CORP., individually and doing**  
2 **business as 22 DAYS NUTRITION**

3 Marc Leffin  
4 22 Days Nutrition  
5 7350 SW 48<sup>th</sup> Street  
6 Miami, FL 33155

7 With a copy to:  
8 ANTHONY J. CORTEZ  
9 GREGORY SPERLA  
10 GREENBERG TRAUERIG LLP  
11 1201 K Street, Suite 1100  
12 Sacramento, CA 95814-3938  
13 Telephone: (916) 442-1111  
14 Facsimile: (916) 448-1709

15 **12. COURT APPROVAL**

16 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
17 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent  
18 Judgment.

19 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
20 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior  
21 to the hearing on the motion.

22 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void  
23 and have no force or effect.

24 **13. EXECUTION AND COUNTERPARTS**

25 This Consent Judgment may be executed in counterparts, which taken together shall be deemed  
26 to constitute one document. A facsimile or .pdf signature shall be construed to be as valid as the original  
27 signature.

28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party  
prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with  
legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent  
Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent

1 Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the  
2 Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is  
3 conclusively presumed that all of the Parties participated equally in the preparation and drafting of this  
4 Consent Judgment.

5 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

6 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
7 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
8 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in  
9 the absence of such a good faith attempt to resolve the dispute beforehand.

10 **16. ENFORCEMENT**

11 ERC may, by motion or order to show cause before the Superior Court of Alameda County,  
12 enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC to  
13 enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are  
14 provided by law for failure to comply with the Consent Judgment. To the extent the failure to comply  
15 with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be  
16 limited to enforcement of this Consent Judgment, but may seek in another action whatever fines, costs,  
17 penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other laws.

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

19 **17.1** This Consent Judgment contains the sole and entire agreement and understanding  
20 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
21 negotiations, commitments, and understandings related hereto. No representations, oral or otherwise,  
22 express or implied, other than those contained herein have been made by any Party. No other  
23 agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to  
24 bind any Party.

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
26 by the Party he or she represents to stipulate to this Consent Judgment.

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The Parties  
4 request the Court to fully review this Consent Judgment and, being fully informed regarding the matters  
5 which are the subject of this action, to:

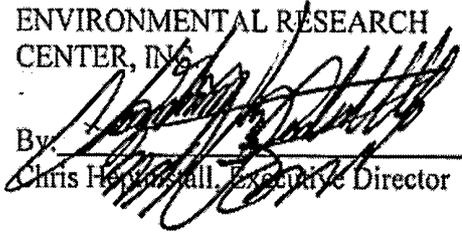
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable  
7 settlement of all matters raised by the allegations of the Complaint that the matter has been diligently  
8 prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),  
10 approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**

12 Dated: 7/19/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heppner, Executive Director

16 Dated: 7/19/, 2017

CO.EXIST NUTRITION CORP.,  
individually and doing business as 22 DAYS  
NUTRITION

By: Marc Lettino  
Its: C.F.O.

1  
2  
3 APPROVED AS TO FORM:

4 Dated: July 19, 2017

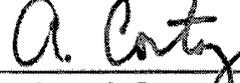
WRAITH LAW

5 By: 

6 William F. Wraith  
7 Attorney for Plaintiff Environmental  
8 Research Center, Inc.

9 Dated: July 19, 2017

GREENBERG TRAURIG LLP

10 By: 

11 Anthony J. Cortez  
12 Gregory Sperla  
13 Attorneys for Defendant Co.Exist  
14 Nutrition Corp., individually and doing  
15 business as 22 Days Nutrition

16 **ORDER AND JUDGMENT**

17 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
18 approved and Judgment is hereby entered according to its terms.

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20 Dated: 1/23/18, 2018

  
Judge of the Superior Court

# **WRAITH LAW**

24422 AVENIDA DE LA CARLOTA  
SUITE 400  
LAGUNA HILLS, CA 92653  
Tel (949) 452-1234  
Fax (949) 452-1102

April 29, 2016

## **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Co. Exist Nutrition Corp. 22 Days Goji Maté Firecracker - Lead**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Walnut Fudge Brownie – Lead, Cadmium**

- **Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Coconut Chocolate Chip – Lead, Cadmium**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar PB & Chocolate Chip Nirvana – Lead, Cadmium**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Quinoa Chocolate Chip Crisp – Lead, Cadmium**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 20g Organic Protein Bar Almond Butter Chocolate Chip – Lead, Cadmium**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 10g Organic Protein Bar Nut Butter Buddha - Lead**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 10g Organic Protein Bar Daily Mocha Mantra - Lead**
- **Co. Exist Nutrition Corp. 22 Days Nutrition 11g Organic Protein Bar Enlightened Pumpkinseed - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 29, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the

April 29, 2016

Page 3

identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by  
Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

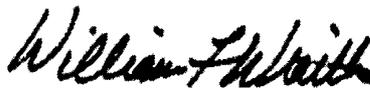
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: April 29, 2016



---

William F. Wraith

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On April 29, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Co.Exist Nutrition, Corp., individually  
and doing business as 22 Days  
Nutrition  
4937 SW 74<sup>th</sup> Court  
Miami, FL 33155

Current President or CEO  
Co.Exist Nutrition, Corp., individually  
and doing business as 22 Days Nutrition  
7350 SW 48<sup>th</sup> Street  
Miami, FL 33155

Current President or CEO  
Co.Exist Nutrition, Corp., individually  
and doing business as 22 Days  
Nutrition  
4552 SW 71<sup>st</sup> Avenue  
Miami, FL 33155

Current President or CEO  
Co.Exist Nutrition, Corp., individually  
and doing business as 22 Days Nutrition  
Post Office Box 432110  
Miami, FL 33243

Current President or CEO  
Co.Exist Nutrition, Corp., individually  
and doing business as 22 Days  
Nutrition  
181 Marsh Hill Road  
Orange, CT 06477

Marco Borges  
(Registered Agent for Co.Exist Nutrition,  
Corp., individually and doing business as  
22 Days Nutrition)  
7350 SW 48<sup>th</sup> Street  
Miami, FL 33155

On April 29, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On April 29, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

April 29, 2016

Page 6

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

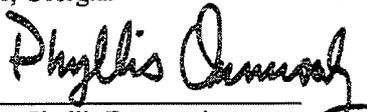
Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On April 29, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on April 29, 2016, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

***WHAT DOES PROPOSITION 65 REQUIRE?***

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
  - Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days;
- and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: April 29, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: April 29, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

***FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .***

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A

**WRAITH LAW**  
24422 AVENIDA DE LA CARLOTA  
SUITE 400  
LAGUNA HILLS, CA 92653  
Tel (949) 452-1234  
Fax (949) 452-1102

July 19, 2017

**NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. Co. Exist Nutrition Corp. 22 Days Nutrition Chocolate Protein Powder - Lead
2. Co. Exist Nutrition Corp. 22 Days Nutrition Vanilla Protein Powder - Lead
3. Co. Exist Nutrition Corp. 22 Days Nutrition Strawberry Protein Powder - Lead
4. Co. Exist Nutrition Corp. 22 Days Nutrition Chunky Peanut Butter Protein Bar – Lead, Cadmium

5. **Co. Exist Nutrition Corp. 22 Days Nutrition Fudge Brownie Protein Bar – Lead, Cadmium**
6. **Co. Exist Nutrition Corp. 22 Days Nutrition Peanut Butter Choc. Chip Protein Bar – Lead**
7. **Co. Exist Nutrition Corp. 22 Days Nutrition Salted Caramel Protein Bar - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least July 19, 2014, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

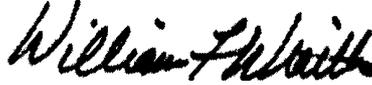
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

July 19, 2017

Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by  
Co.Exist Nutrition Corp., individually and doing business as 22 Days Nutrition**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

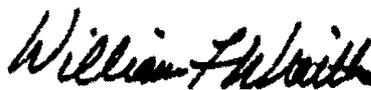
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 19, 2017



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William F. Wraith

**PROOF OF SERVICE**

1 I, William F. Wraith, am an active member of the State Bar of California and not  
2 a party to this action. I am a resident or employed in the county where the mailing took  
3 place. My business address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA  
92653.

4 On January 31, 2018, I served the foregoing documents described as: **NOTICE**  
5 **OF ENTRY OF JUDGMENT** on the following interested party in this action in the  
6 manner identified below:

7 Anthony J. Cortez, Esq.  
8 Gregory Sperla, Esq.  
9 GREENBERG TRAURIG LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814-3938  
cortezan@gtlaw.com  
sperlag@gtlaw.com  
Attorneys for Defendants Co.Exist Nutrition Corp., individually and doing  
business as 22 Days Nutrition

10 [X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing  
11 following this business’s ordinary business practices. I am readily familiar with  
12 this business’s practice for collecting and processing correspondence for mailing.  
13 On the same day that correspondence is placed for collection and mailing, it is  
deposited in the ordinary course of business with the United States Postal Service  
in a sealed envelope with postage fully prepaid.

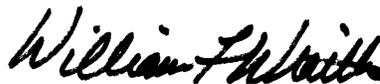
14 [X] **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to  
15 be sent to the persons at the e-mail addresses. I did not receive, within a  
reasonable time after the transmission, any electronic message or other indication  
that the transmission was unsuccessful.

16 and on the following interested party in this action in the manner identified below:

17 California Dept. of Justice, Office of the Attorney General  
18 Proposition 65 Enforcement Reporting  
19 Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

20 [X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing  
21 following this business’s ordinary business practices. I am readily familiar with  
22 this business’s practice for collecting and processing correspondence for mailing.  
On the same day that correspondence is placed for collection and mailing, it is  
deposited in the ordinary course of business with the United States Postal Service  
in a sealed envelope with postage fully prepaid.

23 I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct. Executed on **January 31, 2018** at Laguna Hills, California.

24 

25 \_\_\_\_\_  
26 William F. Wraith